

January 29, 2014



**Talbot County Planning Commission
Final Decision Summary**

Wednesday, November 6, 2013 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

Attendance:

Commission Members:

Thomas Hughes
William Boicourt
Michael Sullivan
John Trax
Paul Spies

Staff:

Sandy Coyman, Planning Officer
Mary Kay Verdery, Assistant Planning Officer
Brett Ewing, Planner I
Michael Mertaugh, Assistant County Engineer
Carole Sellman, Recording Secretary

1. Call to Order—Commissioner Hughes called the meeting to order at 9:00 a.m.

2. Decision Summary Review—October 2, 2013—The Commission noted the following corrections to the draft decision summary:

- a. Line 166—Commissioner Hughes asked Mr. Mertaugh about the cloverleaf which was mentioned on Line 166. Mr. Mertaugh stated it was not in the state's near term plans.
- b. Line 187—strike the phrase "by eliminating phosphorus".
- c. Line 310—Strike line 310 beginning "Commissioner Boicourt said..."

Commissioner Boicourt moved to approve the draft Planning Commission Decision Summary for October 2, 2013, as amended; Commissioner Sullivan seconded the motion. The motion carried unanimously.

3. Old Business

- a. Piers and related boat facilities, Recommendation to County Council—Chapter 190 Zoning Text Amendment—Mary Kay Verdery, Assistant Planning Officer

Ms. Verdery stated the previous amendment allowed a 200 square foot platform limit for all piers whether it was a community or private pier. This area included finger piers, catwalks, and floating docks, therefore it is recommended to address community piers differently. Private piers are recommended to continue to be limited to a 200 square foot limit for the platform area; finger piers, catwalks and boatlifts are recommended to be limited to a 60 square foot limit. For community piers it is recommended increasing the platform limit to 350 square feet. This excludes finger piers, catwalks, or platform area such as a boat lift as these items are limited by the number of slips, which is a function of the permitted pier size.

Commission Hughes asked if the setback from lateral lines from 25 feet to 5 feet be for community piers as well or just private piers. Ms. Verdery stated that currently with a letter of no objection a community or private pier has no limit on encroachment; this establishes a minimum setback.

Ms. Verdery stated that the recommendation in Section 190-75.A.1. Private piers shall be limited to six outboard mooring piles, four boat lifts and two jet-ski lifts. Low profile lifts, lifts with a fixed or floating platform, or covered lifts will be counted in the cumulative total area limit. This is consistent with *Code of Maryland Regulations* (COMAR).

Commissioner Hughes stated he would prefer to address the community pier issue separately and that the additional information came too late to consider properly. Commissioner Boicourt stated the Commission welcomed information at any time, but as Commissioner Hughes stated the Commission would not be able to act on that information right now.

Ms. Verdery stated that in Section 190-75.D.(1) discussed the proposal to permit extension over piers beyond 150 feet in length over tidal marsh. The Commission after discussion determined not to include this provision in their recommendation and that the changes for finger piers would be included.

For Section 190-75.(7)(a) the Commission discussed the concept of a “functional” pier. Brandon Weems, Weems Brothers, stated they rely on their experience to determine what is deemed a repair or replacement. There is some follow up from the State and County. Mr. Coyman noted that the County issues zoning certificates. Ms. Verdery stated that under the proposed Section 190-75, (7)(b) piers may be widened or lengthened to meet requirements in subsection D(2) thru (6).

For Section 190-75.(8) for nonconforming structures the time limit to apply for a permit is 12 months, you can get an extension if you need. The only person who can rebuild a nonconforming structure is the owner. Then you have 18 months to construct and if you are making progress you can get an extension. The Commission stressed the need to clearly express the 12 month replacement limit.

Ms. Verdery related Mr. Weems’ concern about the term “height” in the language from COMAR. COMAR reads: “...provided there is no increase in the original length, width, height, or channelward encroachment.” The Commissioners agreed to remove height from these criteria.

Per COMAR § 190-75.F. states finger piers shall be limited to one per boat slip for community piers. Ms. Verdery stated that two new definitions were proposed, Boat Lift and Platform areas. The Commission believes it would be crucial to distinguish between the types of platforms. Ms. Verdery suggested the language

“fixed or floating horizontal surface along a pier used primarily for getting into or out of boats, lifting boats including...” The Commission concurred and agreed with the language in § G.(3) for the maximum width of the walkway to be six feet.

Commissioner Hughes asked for public comments. Mr. Weems stated his concern for the 85% rule and that there is a need to permit piers to be extended to open water if a marsh exists up to or beyond the 150 foot limit.

The Commission reached consensus on the following recommendations:

1. Section A.(1) consensus on private piers limited to six outboard mooring piles, four boat lifts and two jet-ski lifts, and total platform area.
2. Section 3(a) and (b) included platform areas associated with, but removed the word in both sections.
3. Section 7(b) changed subsection D(2) through (6).
4. Section 8 we removed height and added within twelve months of the event for nonconforming structures.
5. Section F.(3) include per COMAR.
6. Section G.(3) was amended to six feet.
7. Definition of platform areas changed to say primarily getting into or out of boats, lifting boats.

Commissioner Boicourt moved to recommend the text amendment as presented by staff and amended by the Commission for private and community piers as outlined in the proposed amended legislation; seconded by Commissioner Trax. The motion carried unanimously.

4. New Business

- a. Robert D. Higgins and Teresa A. Higgins, #544—Talbot Street, St. Michaels, MD, (map 32, grid 10, parcel 105, lot 4W, zoned General Commercial/Gateway Overlay District), Rick Van Emburgh, Lane Engineering, LLC, Agent.

Mr. Ewing presented the staff report of the applicant’s request for a major site plan for a 4,500 square foot self storage warehouse building. The zoning is general commercial in a gateway overlay district. The applicant is also requesting two gateway waivers for the sidewalk and a ten foot sidewalk easement. The

applicant is also requesting a landscaping waiver for screening from a less intense zoning district.

Staff recommendations include:

1. The applicant address the issues noted in the staff report and the Technical Advisory Committee's comments of October 9, 2013.
2. The applicant shall make an application to and follow all of the rules, procedures, and construction timelines as outlined by the Planning and Permits Department for new construction.
3. The applicant shall commence construction on the proposed project within one (1) year from the date of the "Notice to Proceed".
4. The applicant shall complete and record a revision plat prior to major site plan approval.
5. The applicant shall obtain waivers for the gateway sidewalk, 10 foot sidewalk easement and a landscaping waiver for the screening.
6. One way traffic pattern signage shall be posted onsite.

Rick Van Emburgh, Lane Engineering, represented the applicant. He stated they are working to address the concerns of the Town of St. Michaels'. They will collect all drainage in a stormwater wetland eliminating runoff onto the neighbors. One of the staff concerns is the timber wall located in the gateway buffer yard, they are looking at other alternatives, like a landscaping stone wall to make an attractive landscape and relocation of the dumpster the driveways can be made wider, but this reduces the permitted open space.

Mr. Mertaugh stated 16 foot drive aisle would be suitable for such a low volume use. Vehicles backing out onto a public road are a concern. Mr. Van Emburgh confirmed that the plan was for 16 foot width for one-way travel and landscaping of the stormwater ponds and property corners along with trees in the rear.

Commissioner Hughes suggested removing two units (i.e. 20 feet in length) and adding fenestration and landscaping on the building's street side. Mr. Van Emburgh responded that they are considering a privacy fence in front and additional landscaping.

Commissioner Hughes asked for public comments.

Deborah Renshaw, Codes Enforcement Officer, St. Michaels and Commissioner Ann Borders stated their concerns about this project's impact on the Town's gateway. They recommended substantial architectural and landscaping improvements including moving the parking to the building's front to minimize the visual impact.

189 John Camper, Royal Oak resident, objected to what he viewed as an imposition
190 on private property rights for the community to require a business to be
191 compatible with the neighborhood.

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193 Charles Miller, 1105 Riverview Terrace, noted the property's deed restriction and
194 responsibility to the Rio Vista Community. The Community objects to the
195 project's proposed reliance on the offsite screening to meet its landscaping
196 requirements.

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198 John ("Jack") Davis, resident of Rio Vista and President of Rio Vista
199 Homeowners Association. Mr. Higgins has submitted plans to the Architectural
200 Review Committee. The Association is concerned with the project's aesthetics,
201 lighting, and lack of on-site landscape screens. Mr. Higgins must complete the
202 Rio Vista architectural review process.

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204 Commissioner Hughes asked if Rio Vista could halt the project; Mr. Davis
205 responded that through the courts and he asked the Commission to withhold its
206 approval until the applicant meets his responsibilities to Rio Vista. Mr. Coyman
207 said the County had no legal standing or ability to enforce private deed
208 restrictions and/or covenants.

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210 Mr. Davis asked if there was an ordinance which said essentially that you are to
211 enforce the restrictions of the homeowners association or the County, whichever
212 is more stringent. Mr. Coyman and Commissioner Hughes both stated there was
213 no such ordinance. Mr. Van Emburgh stated the applicant would rely on the
214 existing off-site trees for buffering Rio Vista and hence the landscape waiver
215 request.

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217 Ann Borders of St. Michaels, questioned the applicant relying on offsite buffering
218 over which he has no control should it be removed or die.

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220 Commissioner Hughes stated there were a number of issues; they include:

- 221 1. the road width, twelve or sixteen feet;
222 2. building location in relation to MD 33;
223 3. building aesthetics.

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225 Mr. Coyman related the code's gateway provisions, Section D.(9)

226 "Design and height of structures

227 The following guidelines and standards are intended to
228 create a cohesive streetscape as buildings are constructed or
229 enlarged.

- 230 (a) The design of new structures or additions to
231 existing structures shall be generally compatible
232 in scale and bulk with existing development in
233 the vicinity, as demonstrated by architectural

elevations or renderings submitted with the site plan.”

Mr. Coyman stated the constitutionality of regulating aesthetics has been settled by the U.S. Supreme Court. Mr. Van Emburgh stated Mr. Higgins would like to maintain as much footprint as possible. The back face of the building has doors; the front of the building has false doors.

Commissioner Boicourt suggested the Commission make a site visit to review the issues. Commissioner Boicourt moved to table this matter, seconded by Commissioner Sullivan. The motion carried on a vote of four in favor with Commissioner Spies opposed.

- b. Major Revision Plat, Talbot County, #S1055—East Bonfield Road, Oxford, MD (map 53, grid 14, parcel 151, zoned Rural Conservation/Western Rural Conservation), Mary Kay Verdery, Assistant Planning Officer, Agent.

Mr. Ewing presented the staff report of the applicant’s request proposing to revise the layout of the right of way for East Bonfield Road and Bonfield Court, dividing lot 27 creating Revised lot 27 and an unbuildable remaining lands parcel.

Staff recommendations include:

1. Address the October 9, 2013 Technical Advisory Committee comments of the Planning and Permits, Public Works, Environmental Health Departments, along with Talbot Soil Conservation District, Environmental Planner and Critical Area Commission comments before final plat submittal.

Commissioner Hughes questioned Critical Area comments since the lots were created prior to 1985. Ms. Verdery stated the new remaining lands parcel does not meet density requirements.

Mr. Ewing explained the road was constructed not in accord with the plat. Mr. Mertaugh explained that a private road used to surround this lot; the owner wanted to realign that road, pursued the change but failed in Circuit Court, when two of the adjoining property owners objected. This resulted in a road construction district to create a county road.

Commissioner Hughes asked for public comment; none was offered.

Commissioner Boicourt moved to grant preliminary/final approval for the Major Revision/Subdivision for Talbot County/Thomas F. Kyhos, review plan on the layout and location of public road right of way E. Bonfield Court with staff conditions, Commissioner Spies seconded. The motion carried unanimously.

- c. Minor Revision Plat, Seaside Holding LLC, #L1199—S/S Gross Coate Road near end (map 9, grid 21, parcel 33, zoned Rural Conservation/Western Rural Conservation), Bill Stagg, Lane Engineering, LLC, agent.

Mr. Ewing presented the staff report of the applicant's request and that staff requests the Planning Commission's recommendation due to the location of the sewage disposal area in the critical area and the distance to the dwelling of over 1,300 feet. The land is currently encumbered by an easement preventing dwellings within the critical area.

Commissioner Hughes asked if the easement holder, the Eastern Shore Land Conservancy has been notified. Mr. Stagg said he had no written correspondence from them and that it may not be possible find a perc outside the critical area. Additional perc sites will be sought and permission from the easement holder will be sought.

Commissioner Sullivan moved to recommend a favorable recommendation to the Planning Officer provided additional perc sites be located otherwise the project should return to the Planning Commission for review; Commissioner Spies seconded the motion. The motion carried unanimously.

- d. Village Growth and Sewer Policy Recommendations to the County Council—Sandy Coyman, Planning Officer.

As advertised this item has been postponed. For those who are interested the County Council will be holding a public workshop on November 12th at 4:00 p.m., please check the County website to verify the time and place. The County Council will give directions on how they want the Commission to proceed.

5. Discussions Items

- a. Legislation for cottage industries

Ms. Verdery reviewed the proposed text amendment. Its purpose is to provide a mechanism to bring a number properties operating a cottage industry into zoning compliance while maintaining the spirit of the cottage industry provisions. The amendment would change cottage industries from special exceptions to residential accessory uses. This would permit the possibility of variances to bulk requirements which are unavailable under current code.

Ms. Verdery noted that the County could conduct a site inspection every two years as a condition of renewal. Ms. Verdery stated that eight to ten existing operations are in violation. The Planning Commission discussed the merits and potential conditions that could be placed on cottage industries during the review process. Ms. Verdery explained this item would be considered for action next month.

6. Staff Matters

- 325 a. Planning Commission Bylaws—Tentative for November 26, 2013 County
326 Council review.
327 b. January Commission Meeting—Thursday, January 2, 2014.
328 c. Mr. Trax will attend the December meeting. Ms. Verdery said she would discuss
329 it with Mr. Pullen.
330 d. Mr. Coyman stated the November 12, 2013 meeting was being deferred to a
331 public meeting at a time to be determined.
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333 **7. WorkSessions**

334 **8. Commission Matters**

335 **9. Adjournment**—Commissioner Hughes adjourned the meeting at 12:20 a.m.
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